



## POLICY AND PROCEDURE

<b>Subject: Policy for City Council Access to Confidential Documents</b>	<b>Index: 1201-12 Number:</b>
<b>Effective Date: March 16, 2021</b>	<b>Prepared By: City Attorney's Office</b>
<b>Supersedes: November 17, 2020 version</b>	<b>Approved By: City Council</b> <i>[Signature]</i>

### PURPOSE:

City Council deliberations and the maintenance of City records are subject to the general rule that they are "the public's business" and subject to a general obligation of transparency. However, City officials also have a superior duty to maintain confidentiality of some information, including, but not limited to attorney-client confidences and work product, closed session deliberations, matters of privacy and employment, and negotiating strategies in real estate and settlement matters. The City's Records Retention Policy exempts from public disclosure the records and files of the City Attorney, and all attorney-client privileged information and attorney work product as determined by the City attorney based on applicable statute or case law. It also exempts records that meet the definitions set forth in Government Code Sections 6254 and 6255 and applicable case law.

The Brown Act provides that, with very limited exceptions, "a person may not disclose confidential information that has been acquired by being present in a closed session . . . to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information." (Gov. Code § 54963(a).) Further, only the client can waive the attorney-client privilege, and the city attorney's client is the City, acting through the Council. Thus, neither the City Attorney nor individual Councilmembers may waive the attorney-client privilege even if the privileged communication was only with that Councilmember. Instead, the waiver must be approved by the Council as a body.

### POLICY:

The following advisement shall accompany the release of confidential, non-public records to City Councilmembers and shall be incorporated into read receipt confirmations for electronic transmittals of said records:

"The information provided herein is to be viewed only by San Clemente City Councilmembers and authorized City staff. Under California Government Code section 54963, it is unlawful to disclose to any person not entitled to receive confidential information provided in connection with a closed session of the City Council without express written authorization of the City Council. Willful violation of these terms may result in disciplinary action and/or, in the case of a City Councilmember, referral to the grand jury. Waiver of the attorney-client privilege or release of attorney work-product may only occur by a majority vote of the City Council.

[Insert Document Identifications]

Received by \_\_\_\_\_ Date \_\_\_\_\_"

*An email from a member of Council that confirms receipt of the advisement language for identified hard-copy confidential materials may be submitted to the City as an acceptable prerequisite to receiving confidential materials.*